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# Anything But Mickey Mouse: Legal Issues in the 2012 Wisconsin Gubernatorial Recall

Steven M. Biskupic

[sbiskupic@biskupicjacobs.com](mailto:sbiskupic@biskupicjacobs.com)

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# ANYTHING BUT MICKEY MOUSE: LEGAL ISSUES IN THE 2012 WISCONSIN GUBERNATORIAL RECALL

STEVEN M. BISKUPIC\*

*Wisconsin Governor Scott Walker faced only the third gubernatorial recall in the nation's history and was the first to survive. From a legal perspective, the 2012 Walker recall involved equally unique issues arising from the Wisconsin Constitution and obscure state statutes. This Article reviews the history of recall in Wisconsin and examines three significant legal issues that arose during the Walker recall: (1) litigation over review of submitted recall signatures; (2) unlimited campaign finance contributions; and (3) the scheduling of the recall election. The Article concludes that an assessment of the historical nature of the Walker recall is incomplete without consideration of the impact of these issues.*

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\*Steven M. Biskupic, Marquette '87, is a partner at Biskupic & Jacobs, S.C. Biskupic was counsel for Governor Walker during the recall. The views expressed herein are solely the author's. The author also acknowledges the contributions of Joseph Olson, Michael Screnock, and Adam Witkov, attorneys, and Lou Jellings, librarian, at Michael Best & Friedrich, LLP, who contributed to the legislative history and other research discussed herein.

## I. INTRODUCTION

The 2012 Wisconsin recall elections repeatedly were called historic.<sup>1</sup> Governor Scott K. Walker became only the third governor in the history of the country to face a recall election, and was the first to survive.<sup>2</sup> The politics of the recall focused on Governor Walker's efforts to curtail collective bargaining rights of public employees, which had been unchallenged since their creation in 1959.<sup>3</sup> The legal disputes surrounding the recall, although overshadowed by the political aspects, were equally rare. From the legal presumption that cartoon characters were voters to a law permitting unlimited campaign contributions, these and other issues established the 2012 recall as not just politically notable, but legally as well.

This Article provides a legal perspective of recall in Wisconsin and reviews three legal issues that impacted the 2012 gubernatorial recall: first, the litigation, which arose after the Wisconsin Government Accountability Board (GAB), the agency overseeing state-wide elections, publicly announced that recall petition names such as "Mickey Mouse" and "Bugs Bunny" would be presumed valid;<sup>4</sup> second, an obscure state statute, section 13m, exempted recall contributions from campaign finance limits, making the Wisconsin gubernatorial recall by far the most expensive campaign in Wisconsin history;<sup>5</sup> and third, the agreement of the opposing recall parties and the GAB to an orderly schedule for the recall election, which sidestepped a constitutional

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1. See, e.g., Mark Guarino, *Gov. Scott Walker Makes History, Survives Wisconsin Recall Election*, CHRISTIAN SCI. MONITOR (June 6, 2012), <http://www.csmonitor.com/USA/Elections/Governors/2012/0606/Gov.-Scott-Walker-makes-history-survives-Wisconsin-recall-election-video>.

2. *Recall of State Officials*, NAT'L CONF. ST. LEGISLATURES (Sept. 11, 2013), <http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx>; see also Timothy Pack, Comment, *High Crimes and Misdemeanors: Removing Public Officials from Office in Utah and the Case for Recall*, 2008 UTAH L. REV. 665, 678; Guarino, *supra* note 1. The other two governors to face recall, as discussed *infra*, were Gray Davis of California in 2003 and Lynn J. Frazier of North Dakota in 1921. See *infra* notes 17–23 and accompanying text.

3. Act of Sept. 22, 1959, ch. 509, 1959 Wis. Sess. Laws 623 (codified at WIS. STAT. § 111.70 (1959)); see also *Wis. Educ. Ass'n Council v. Walker*, 824 F. Supp. 2d 856, 859 & n.1 (W.D. Wis. 2012), *aff'd in part, rev'd in part*, 705 F.3d 640 (7th Cir. 2013).

4. Patrick Marley, *Election Officials May Ask for More Time: Longer Review of Recall Petitions Likely*, MILWAUKEE J. SENTINEL, Dec. 14, 2011, at A1.

5. WIS. STAT. § 11.26(13m) (2011–2012); *Recall Race for Governor Cost \$81 Million*, WIS. DEMOCRACY CAMPAIGN (Jan. 31, 2013), <http://www.wisdc.org/pr072512.php>; see also *infra* Part V.

challenge to whether the governor and lieutenant governor could be separately recalled.<sup>6</sup>

## II. THE LIMITED HISTORY OF GUBERNATORIAL RECALL

Recall is the citizen-initiated procedure seeking to remove an elected official prior to the expiration of the term to which he was previously elected.<sup>7</sup> In most instances, citizens circulate (for signature by “qualified electors”) a petition demanding recall, sometimes, though not always, for a specific reason (such as malfeasance).<sup>8</sup> The sufficiency of the petition, including the number of signatures, is then evaluated by government officials, the courts, or both.<sup>9</sup> Finally, assuming these prior steps have been successful, an election is held, sometimes with the incumbent automatically on the ballot.<sup>10</sup>

The right to recall was present but purportedly unused in the Articles of Confederation.<sup>11</sup> The power remained dormant for more than 125 years until the Progressive Movement in the early 1900s, when recall was first used on the local level and then spread to statewide usage.<sup>12</sup> According to one study, thirty-six states presently give voters the right to recall, but only nineteen permit the recall of officials elected on a statewide basis.<sup>13</sup> Wisconsin is one of the nineteen.<sup>14</sup> California voters, according to another study, have attempted to recall more than 500 public officials since the early 1900s, with more than 470 removed

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6. See *Judge Approves May 8, June 5 Recall Dates*, WQOW.COM (Mar. 13, 2012, 9:35 PM), <http://www.wqow.com/story/17152190/all-sides-agree-to-may-8-june-5-for-recalls?clienttype=printable> (reporting that a Wisconsin judge signed off on an agreement reached between recall targets and the recall committees for consolidated primary and general election dates).

7. Floyd Feeney, *The 2003 California Gubernatorial Recall*, 41 CREIGHTON L. REV. 37, 38 (2007); R. Perry Sentell, Jr., *Remembering Recall in Local Government Law*, 10 GA. L. REV. 883, 884 (1976); Pack, *supra* note 2, at 675.

8. *Recall of State Officials*, *supra* note 2; see also WIS. STAT. §§ 6.02–6.25.

9. See *Recall of State Officials*, *supra* note 2; see also *infra* Part III.B.3.

10. See *Recall of State Officials*, *supra* note 2.

11. ARTICLES OF CONFEDERATION OF 1778, art. 5, § 1 (“[W]ith a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.”); Sentell, *supra* note 7, at 884 (citing Herbert S. Swan, *The Use of the Recall in the United States*, in *THE INITIATIVE, REFERENDUM AND RECALL* 298, 298 n.2 (William Bennett Munro ed., 1912)); see also Pack, *supra* note 2, at 676.

12. Sentell, *supra* note 7, at 884–85; Pack, *supra* note 2, at 676–77.

13. Pack, *supra* note 2, at 678.

14. See Ann S. Jacobs, *Recall in Wisconsin: A Historical Perspective*, MESSENGER, Spring 2012, at 10, 10; *Recall of State Officials*, *supra* note 2.

from office.<sup>15</sup> Wisconsin has used the power to recall much more sparingly.<sup>16</sup>

Prior to 2011, only two governors in the United States had faced a recall vote and both were removed from office.<sup>17</sup> In 1921, North Dakota recalled its governor, Lynn J. Frazier.<sup>18</sup> A farmer and schoolteacher, Frazier had been elected under the Nonpartisan League banner in 1916, 1918, and 1920, and was set to face the voters again in 1922.<sup>19</sup> But political upheaval caused by poor farm prices and related economic depression prompted a successful effort by the rival Independent Voters' Association to remove him from office.<sup>20</sup> Ironically, the next year Frazier was elected to the United States Senate, where he served until 1940.<sup>21</sup>

More than eighty years later, in 2003, California recalled Governor Gray Davis and elected Arnold Schwarzenegger in his place.<sup>22</sup> Davis was first elected governor in 1998 and had just won reelection in 2002 when a faltering economy, revolts over taxes, and lackluster party support combined to fuel his removal.<sup>23</sup>

### III. RECALL IN WISCONSIN

The legal path to the 2012 recall election of Scott Walker began 100 years earlier with the creation of the right to recall in Wisconsin. The following Part discusses the history of Wisconsin recall, the current statutory framework of recall, significant judicial decisions, and the factual backdrop of the Walker recall.

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15. Feeney, *supra* note 7, at 40–41.

16. See Jacobs, *supra* note 14, at 10 (discussing the recall of three state senators prior to Act 10, 2011 Wis. Act 10); see also *infra* notes 65–67 (reviewing reported municipal and other recalls).

17. Pack, *supra* note 2, at 678; Amy Zacks, *Recalling Governors: An Overview*, RUTGERS (June 6, 2012), [http://governors.rutgers.edu/usgov/governors\\_recallections.php](http://governors.rutgers.edu/usgov/governors_recallections.php).

18. Lynn J. Frazier, ST. HIST. SOC'Y N.D., <http://www.history.nd.gov/exhibits/governors/governors12.html> (last visited May 20, 2013).

19. *Id.*

20. See *id.*

21. *Id.*

22. See Feeney, *supra* note 7, at 57.

23. See *id.* at 45–48 (quoting CALIFORNIA SECRETARY OF STATE, RECALL INFORMATION: PROPONENT'S GROUNDS FOR RECALL AND THE GOVERNOR'S RESPONSE (2003), available at <http://vote2003.sos.ca.gov/recall/1-1-proponents-grounds.html>).

*A. History*

The right to recall in Wisconsin began in 1911 when the legislature enacted a statute allowing for recall of municipal officials.<sup>24</sup> The requirements for recall were straightforward: “Any city officer holding an elective office” who had been in office for at least six months would be forced to face the voters again within fifty days if a petition was submitted with signatures equaling at least one-third of the city-wide vote total from the last gubernatorial election.<sup>25</sup> The petition was required to contain a general statement of the grounds upon which removal was sought and the signatures had to be collected within a thirty-day period.<sup>26</sup> The signed petitions were to be presented to the city clerk, who was given ten days to ensure that the appropriate number of signatures had been submitted.<sup>27</sup>

Four years later, in 1915, the legislature tweaked the procedures (as they would be again and again over the years) to require petitions to include the specific reason for removal, and, further, to give county judges the power to determine “by careful examination” whether the petitions were sufficient in number and purpose.<sup>28</sup>

Recall did not apply to Wisconsin state officeholders until the state constitution was amended in 1926.<sup>29</sup> The constitutional amendment was similar to the existing municipal recall statute, except that the state incumbent had to be in office for one year before a recall (instead of just six months), and the number of necessary signatures was 25% of the prior gubernatorial election total (as opposed to 33% for municipal officials).<sup>30</sup> In addition, a recall of a state officeholder did not need to be based on any specific reason.<sup>31</sup> In fact, no stated reason was necessary.<sup>32</sup>

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24. Act of July 11, 1911, ch. 635, 1911 Wis. Sess. Laws 843 (codified at WIS. STAT. § 94j-1 (1911)); *see also* Stahovic v. Rajchel, 122 Wis. 2d 370, 375, 363 N.W.2d 243, 245 (Ct. App. 1984) (explaining that the right to recall municipal officials is a statutory creation; the recall of congressional, judicial, or non-municipal legislative officers is a constitutional right).

25. Act of July 11, 1911.

26. *Id.* at 843.

27. *Id.*

28. Act of July 8, 1915, ch. 385, 1915 Wis. Sess. Laws 459, 467–68 (codified as amended at WIS. STAT. § 10.44 (1915)); *Mueller v. Jensen (In re Recall of Delafield City Official)*, 63 Wis. 2d 362, 369, 217 N.W.2d 277, 280 (1974).

29. *See* Jacobs, *supra* note 14, at 10; *see also* Act of June 8, 1925, ch. 270, 1925 Wis. Sess. Laws 348 (codified as amended at WIS. CONST. art. XIII, § 12).

30. Act of June 8, 1925, at 348 (codified as amended at WIS. CONST. art. XIII, § 12(1)).

31. *See id.*

32. *See id.*

If sufficient signatures were gathered, an election was to be held no sooner than forty days but no later than forty-five days “from the filing of [the] petition.”<sup>33</sup>

Another seven years passed before the state legislature enacted statutes providing the “machinery . . . govern[ing] recall elections” similar to those in place for municipal recalls.<sup>34</sup> For example, the legislature imposed requirements for the circulation of the petitions (similar to normal nomination procedures); review by the appropriate election official (limited to three days); and the necessity of a primary (for opponents of the incumbent only).<sup>35</sup>

The statutes relating to municipal recall and those relating to the constitutional right to recall state officeholders continued to be reworked by the legislature and by constitutional amendment. For example, in 1981, the state constitution was amended to provide for a primary election within six weeks after the submission of valid signatures, to be followed by a general election four weeks later.<sup>36</sup> In addition, the two separate recall statutes were consolidated in the early 1960s as part of a general rewrite of the state’s election laws.<sup>37</sup> In sum, however, the core right to recall was the same as enacted in the early nineteenth century.

### *B. Current Statute*

The modern version of the recall statute in Wisconsin is contained in section 9.10,<sup>38</sup> which has three main parts: the general guidelines relating to the circulation of a petition, specific requirements for the face of the recall petition, and the standards for review and scheduling by a government agency.

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33. *Id.* (codified as amended at WIS. CONST. art. XIII, § 12(2)).

34. Act of Mar. 29, 1933, ch. 44, 1933 Wis. Sess. Laws 215 (codified at WIS. STAT. § 6.245 (1933)); Letter from the Chief of the Legislative Reference Library to George Brown, Office of the Sec’y of State (December 23, 1932), *microformed on Drafting Records*, 1933 (Wis. Legis. Reference Bureau) (regarding creation of Wisconsin Statute section 6.245 as “machinery to govern recall elections”).

35. Act of Mar. 29, 1933 (codified at WIS. STAT. § 6.245).

36. See Constitutional Amendment of April 1981, 1981 Wis. Sess. Laws 1725 (codified at WIS. CONST. art. XIII, § 12(2), (4)(b)–(c)).

37. See Act effective July 1, 1967, ch. 666, 1965 Wis. Sess. Laws 1217, 1319, 1322; Mueller v. Jensen (*In re Recall of Delafield City Official*), 63 Wis. 2d 362, 370, 217 N.W.2d 277, 281 (1974).

38. WIS. STAT. § 9.10 (2011–2012).

### 1. General Guidelines

Section 9.10(1) provides that any elected official in Wisconsin may be subject to a recall.<sup>39</sup> To commence a recall, the petitioners must file a declaration of intent with the appropriate election official—in the case of the governor, the GAB.<sup>40</sup> If petitioners file a declaration, the GAB must publicly announce the necessary number of signatures.<sup>41</sup> In most cases, the total will be 25% of the votes cast during the prior gubernatorial election.<sup>42</sup>

### 2. Specific Petition Requirements

Section 9.10(2) sets forth a laundry list of requirements for the actual recall petition and the signatures to be gathered, including: (1) the petition must contain the words “RECALL PETITION” in bold print on the top of every page;<sup>43</sup> (2) the signatures must be gathered within a sixty-day period;<sup>44</sup> (3) each individual signature must be from a “qualified elector” and must be dated;<sup>45</sup> and (4) the circulator of the petition must certify that he or she properly collected each of the signatures on each page.<sup>46</sup>

### 3. Review and Scheduling by a Government Agency

Under section 9.10(3), if a recall petition is submitted (“offered for filing”), the election official to whom the petition is submitted (normally the GAB) has thirty-one days to complete a “careful examination” of whether the petition, on its face, is sufficient to call for an election.<sup>47</sup> Within that thirty-one-day period, the incumbent has ten days in which to file objections.<sup>48</sup> The recall petitioners then receive five days to file a

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39. *Id.* § 9.10(1)(a). The preamble of article XIII, section 12 requires the officeholder to have served one year before being subject to recall. WIS. CONST. art. XIII, § 12.

40. See WIS. GOV'T ACCOUNTABILITY BD., RECALL OF CONGRESSIONAL, COUNTY AND STATE OFFICIALS 3, 11 (2009), available at [http://gab.wi.gov/sites/default/files/publication/65/recall\\_manual\\_for\\_congressiona\\_county\\_and\\_state\\_\\_82919.pdf](http://gab.wi.gov/sites/default/files/publication/65/recall_manual_for_congressiona_county_and_state__82919.pdf).

41. See WIS. STAT. § 9.10(1)(d).

42. *Id.* § 9.10(1)(b).

43. *Id.* § 9.10(2)(a).

44. *Id.* § 9.10(2)(d).

45. *Id.* § 9.10(2)(e)1, 6–7. “Qualified electors” are those eligible to vote. *Id.* §§ 6.02–6.25.

46. *Id.* § 9.10(2)(em).

47. *Id.* § 9.10(3)(b). The grounds for challenge, which are not exhaustive, are listed in section 9.10(2)(e)–(s).

48. *Id.* § 9.10(3)(b).



“rebuttal,” and the incumbent has two days to file a reply.<sup>49</sup> If the election official determines that the petition is insufficient, its decision must set forth the particular reasons for the deficiencies and give the petitioners five days to correct any errors.<sup>50</sup> During this thirty-one-day period, any party may seek an extension of the thirty-one-day time limit by establishing “good cause” to the local circuit (county) court.<sup>51</sup>

If the election official accepts the petition for filing, the incumbent has seven days to file a writ of mandamus or prohibition in the circuit court, challenging the agency determination.<sup>52</sup> At that point, the only matter that the court may consider is whether the petition was sufficient.<sup>53</sup> If the petition is sufficient, the recall election proceeds. An incumbent officeholder is automatically on the ballot for the recall election unless, within ten days of the filing, the officeholder resigns from office.<sup>54</sup> Other candidates are placed on the ballot through normal nomination procedures.<sup>55</sup> The recall election is scheduled for the Tuesday of the sixth week after the petition filing.<sup>56</sup> If a primary is required, that date becomes the primary and a general election is held four weeks later.<sup>57</sup>

### *C. Prior Judicial Interpretations*

The first reported legal challenge involving recall in Wisconsin was in 1927, when Superior Mayor Fred Baxter successfully prevented a recall election by arguing that more than 160 signatures were not properly dated.<sup>58</sup> The Wisconsin Supreme Court agreed, holding that the statutory use of the word “date” required that each signature be accompanied by a designation of the day, month, and year of the signing.<sup>59</sup> The failure of the signatures to include a year (most had just the day and month) rendered the signatures invalid.<sup>60</sup> Without the 160

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* § 9.10(bm).

53. *Id.*

54. *Id.* § 9.10(3)(c).

55. *Id.*

56. WIS. CONST. art. XIII, § 12(2).

57. *Id.* § 12(4)(c).

58. *State ex rel. Baxter v. Beckley*, 192 Wis. 367, 369, 372, 212 N.W. 792, 793–94 (1927).

59. *Id.* at 370.

60. *Id.* at 372.

challenged signatures, the petition fell short of the required number and the recall failed.<sup>61</sup>

More than fifty years later, a similar series of challenges arose to the form of submitted recall signatures. In three separate cases in 1984, the Wisconsin Court of Appeals held that one invalid signature did not invalidate the entire page of recall signatures;<sup>62</sup> a petition seeking signatures could not be left unattended for others to sign;<sup>63</sup> and the notarization used to certify recall signatures did not itself need to be dated.<sup>64</sup>

A substantial number of the reported recall decisions in Wisconsin address municipal recalls and whether petitioners satisfied the requirement of sufficient cause for removal (a requisite that does not exist for non-municipal officials).<sup>65</sup> According to the Wisconsin

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61. *Id.*

62. *Stahovic v. Rajchel*, 122 Wis. 2d 370, 376, 363 N.W.2d 243, 246 (Ct. App. 1984) (resulting in the recall election of the mayor and two aldermen from Greenfield).

63. *Jensen v. Miesbauer (In re Petition for Recall of Jensen)*, 121 Wis. 2d 467, 469–70, 360 N.W.2d 535, 536–37 (Ct. App. 1984) (noting that the petition circulator admitted to leaving petitions unattended, which called into doubt the validity of the gathered signatures).

64. *Hasse v. Angove (In re Recall of Haase)*, 120 Wis. 2d 40, 46–47, 353 N.W.2d 821, 824 (Ct. App. 1984) (upholding recall elections of members of the New Berlin School Board); *see also Redner v. Berning (In re Recall of Mayor Redner)*, 153 Wis. 2d 383, 389–95, 450 N.W.2d 808, 811–13 (Ct. App. 1989) (upholding recall of mayor of Hudson despite failure of particular signatures to list municipality of residence and failure to abide by other technical requirements).

65. *See Mueller v. Jensen (In re Recall of Delafield City Official)*, 63 Wis. 2d 362, 373–74, 217 N.W.2d 277, 282–83 (1974) (determining good cause was established by alleging that alderman in City of Delafield failed to permit votes/referenda on city development); *Beckstrom v. Kornsi (In re Recall of Montreal Mayor)*, 63 Wis. 2d 375, 378, 386, 217 N.W.2d 283, 285, 289 (1974) (alleging that the failure of the Montreal Mayor to seek legal advice regarding sewer development was sufficient cause); *In re Recall of Mayor Redner*, 153 Wis. 2d at 389 (determining that the petition established cause with an allegation of improper actions with respect to a proposed dog track); *Carlson v. Jones (In re Recall Petition of Carlson)*, 147 Wis. 2d 630, 633, 638, 433 N.W.2d 635, 636, 638 (Ct. App. 1988) (concluding that cause was established by allegations that the chairman of the Town of Oconomowoc held meetings and passed legislation in violation of open meetings law and took other actions detrimental to town citizens); *Naparalla v. Klotzbuecher (In re Recall of Naparalla)*, 114 Wis. 2d 594, 338 N.W.2d 527 (Ct. App. 1983) (unpublished table decision) (holding that the failure to act in the best interests of the township constituents was insufficient to justify recall); *Hill v. Migayzi (In re Petition for Recall of Hill)*, 108 Wis. 2d 782, 324 N.W.2d 831 (Ct. App. 1982) (unpublished table decision) (finding the proposed recall of the Village of Mukwonago President was justified by specific reference to votes on municipal improvements); *Gronke v. Struck (In re Recall of Sch. Bd. Member Gronke)*, 101 Wis. 2d 736, 306 N.W.2d 310 (Ct. App. 1981) (unpublished table decision) (declaring that good cause had been established by petition alleging that the Town of Sharon School Board Member supported a merger with the Clinton School District).

Supreme Court, “[r]easons which are wholly frivolous and inconsequential are not good and sufficient reasons. To constitute good and sufficient reasons the recall petition must set forth reasons related to official duties with sufficient specificity to give notice to the official so that he can respond to the electors.”<sup>66</sup> Courts also have generally noted the limited jurisdiction that exists for the judiciary over disputes involving recall petitions.<sup>67</sup>

#### *D. The Walker Recall*

Governor Walker was elected Governor of Wisconsin in November of 2010<sup>68</sup> and was sworn in on January 3, 2011.<sup>69</sup> With control of both legislative houses, Walker and other Republican leaders moved quickly to address the state’s \$3.6 billion budget deficit.<sup>70</sup> The most controversial remedy was “Act 10,” a “Budget Repair Bill,” which greatly curtailed the collective bargaining rights of large groups of public employees.<sup>71</sup> Act 10 was passed on March 11, 2011.<sup>72</sup> Even before Act 10’s passing, massive protests literally engulfed the state capitol.<sup>73</sup> After

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66. *Mueller*, 63 Wis. 2d at 373.

67. *In re Recall of Montreal Mayor*, 63 Wis. 2d at 386 (concluding that the court has no jurisdiction to consider the accuracy of the reason for a recall petition); *Kuechmann v. Sch. Dist. of La Crosse*, 170 Wis. 2d 218, 221, 225, 487 N.W.2d 639, 640, 642 (Ct. App. 1992) (stating that there was no jurisdiction to consider an equal protection challenge to the recall statute until plaintiffs exhausted administrative remedies).

68. See WIS. GOV’T ACCOUNTABILITY BD., 2010 FALL GENERAL ELECTION RESULTS SUMMARY—POST-RECOUNT 1 (2010), available at [http://gab.wi.gov/sites/default/files/percent%20results%20post%20recount\\_120710.pdf](http://gab.wi.gov/sites/default/files/percent%20results%20post%20recount_120710.pdf); WIS. LEGISLATIVE REFERENCE BUREAU, STATE OF WISCONSIN 2011–2012 BLUE BOOK 912 (2011).

69. Patrick Marley et al., *Jubilant Republicans Celebrate a New Era: A New Governor Inaugurated*, MILWAUKEE J. SENTINEL, Jan. 4, 2011, at A1.

70. See OFFICE OF THE GOVERNOR SCOTT WALKER, REFORMS AND RESULTS 1–3, available at [http://walker.wi.gov/sites/default/files/documents/Act\\_10\\_Success\\_Recap.pdf](http://walker.wi.gov/sites/default/files/documents/Act_10_Success_Recap.pdf).

71. See *Wisconsin Act 10, the “Scott Walker Budget Repair Bill” (2011)*, BALLOTPEdia (Oct. 22, 2012, 8:41 PM), [http://ballotpedia.org/wiki/index.php/Wisconsin\\_Act\\_10\\_the\\_%22Scott\\_Walker\\_Budget\\_Repair\\_Bill%22\\_\(2011\)](http://ballotpedia.org/wiki/index.php/Wisconsin_Act_10_the_%22Scott_Walker_Budget_Repair_Bill%22_(2011)); see also 2011 Wis. Act 10; WIS. STAT. § 111.70 (1959) (authorizing the right of public employees to organize or join labor organizations).

72. 2011 Wis. Act 10; *Wisconsin Act 10, the “Scott Walker Budget Repair Bill” (2011)*, *supra* note 71; see also *Wis. Educ. Ass’n Council v. Walker*, 824 F. Supp. 2d 856, 862 (W.D. Wis. 2012), *aff’d in part, rev’d in part*, 705 F.3d 640 (7th Cir. 2013).

73. Chris Bury & Olivia Katrandjian, *Protestors Take State Capital in Wisconsin*, ABC NEWS (Feb. 18, 2011), <http://abcnews.go.com/US/protestors-state-capital-wisconsin/story?id=12947666#.UZuBd6go7IU>.

passage, opponents of Governor Walker began contemplating a recall,<sup>74</sup> though recall became a weapon for both political parties.<sup>75</sup> Ultimately, fifteen Wisconsin elected officials from both parties faced recall after the passage of Act 10.<sup>76</sup>

The recall effort against Governor Walker became formal on November 15, 2011, when the Committee to Recall Walker filed the necessary registration with the GAB.<sup>77</sup> The Committee then had sixty days to gather the required number of signatures, which the GAB calculated to be 540,208.<sup>78</sup>

#### IV. LITIGATION OVER THE “CAREFUL EXAMINATION” OF “MICKEY MOUSE” AND “BUGS BUNNY” SIGNATURES

In November 2011, after the circulation of the recall petition began, the GAB made a series of public announcements regarding how the GAB would review the petition. First, the GAB said there was no prohibition on signing a recall petition more than once, but only one such signature would be counted.<sup>79</sup> According to GAB spokesperson Reid Magney, “There is no prohibition on signing more than once. It’s up to the recall committee to weed out possible duplicates.”<sup>80</sup> This prompted media reports of individuals bragging about signing more than once, including one person who claimed to have signed his name

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74. See, e.g., Janine Anderson, *Is a Scott Walker Recall Next for Wisconsin?*, CALEDONIA PATCH (July 26, 2011, 8:41 PM), <http://caledonia.patch.com/groups/politics-and-elections/p/is-a-walker-recall-next>.

75. Jason Stein & Tom Tolan, *‘The Nation Is Watching’: Election 2011 Today’s Recall Elections Put Spotlight on Wisconsin*, MILWAUKEE J. SENTINEL, Aug. 9, 2011, at A1.

76. See *Recall Election Information*, WIS. GOV’T ACCOUNTABILITY BD., <http://gab.wi.gov/elections-voting/recall> (last visited Feb. 18, 2014); *2011 State Senate Recall Committees*, WIS. GOV’T ACCOUNTABILITY BD., <http://gab.wi.gov/elections-voting/recall/2011-senate> (last visited May 13, 2014).

77. See *Committee to Recall Walker*, WIS. GOV’T ACCOUNTABILITY BD., <http://gab.wi.gov/node/2100> (last visited May 21, 2014). A second Walker recall group, “Close Friends to Recall Walker,” filed registration papers as well but did not submit signatures. See *Close Friends to Recall Walker*, WIS. GOV’T ACCOUNTABILITY BD., <http://gab.wi.gov/node/2085> (last visited May 21, 2014).

78. *Committee to Recall Walker*, *supra* note 77.

79. Denise Lockwood, *State Officials Say Holding onto Signed Walker Recall Petitions Is Illegal*, CALEDONIA PATCH (Nov. 17, 2011, 5:30 PM), <http://caledonia.patch.com/articles/state-officials-say-holding-onto-walker-recall-petitions-is-illegal-dems-angered>.

80. *Id.* (internal quotation marks omitted).

more than eighty times on recall petitions.<sup>81</sup> Second, the GAB said that questionable names such as “Mickey Mouse” would be presumed valid.<sup>82</sup> In fact, as later evidence established, the GAB had counted the name “Bugs Bunny” on a 2010 recall petition of a state senator.<sup>83</sup> Finally, the GAB said it was the duty of the elected official, not the GAB, to challenge multiple or fictitious signatures.<sup>84</sup>

The GAB announcements prompted the Walker campaign to file suit in Wisconsin circuit court.<sup>85</sup> The complaint sought to enjoin the GAB’s interpretations (and public statements) relating to multiple and fictitious signatures and sought to shift the burden back to the GAB as the primary reviewer of the petition.<sup>86</sup>

Circuit Court Judge J. Mac Davis agreed with the Walker campaign.<sup>87</sup> The court held that under the recall statute, section 9.10, the GAB had the affirmative duty to review the submitted signatures and: “(1) identify and strike duplicative names; (2) identify and strike fictitious names; and (3) identify and strike signers that [could not] be verified [as qualified] electors.”<sup>88</sup> In essence, the judge held that under the statute, the GAB could not shift the burden for a detailed review of the petition to the elected official subject to the recall.<sup>89</sup> The statute required the GAB to conduct a careful examination and allowing Bugs

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81. *Man Claims He Signed 80 Walker Recall Petitions*, WISN.COM (Dec. 8, 2011, 11:28 AM), <http://www.wisn.com/Man-Claims-He-Signed-80-Walker-Recall-Petitions/-/9374034/8043808/-/qkpo3qz/-/index.html>.

82. Marley, *supra* note 4; *Statement on Recall Petition Verification*, WIS. GOV’T ACCOUNTABILITY BD. (Dec. 14, 2011), <http://gab.wi.gov/node/2128> (“Wisconsin law requires the G.A.B. to presume that petition signatures are valid.”).

83. Memorandum from Kevin J. Kennedy, Dir. & Gen. Counsel & Nathaniel E. Robinson, Elections Div. Adm’r, Wis. Gov’t Accountability Bd., to Members, Wis. Gov’t Accountability Bd., at Ex. G (June 8, 2011), *available at* [http://gab.wi.gov/sites/default/files/event/74/holperin\\_exhibits\\_for\\_6\\_8\\_11\\_board\\_meeting\\_pdf\\_15306.pdf](http://gab.wi.gov/sites/default/files/event/74/holperin_exhibits_for_6_8_11_board_meeting_pdf_15306.pdf); *see also Mickey Mouse, Adolf Hitler Allowed on Wis. Recall Petitions*, WISN.COM (Dec. 14, 2011, 5:30 AM), <http://www.wisn.com/Mickey-Mouse-Adolf-Hitler-Allowed-On-Wis-Recall-Petitions/-/9374034/8043692/-/sf02pb/-/index.html>.

84. *See* Memorandum from Kevin J. Kennedy, Dir. & Gen. Counsel & Nathaniel E. Robinson, Elections Div. Adm’r, Wis. Gov’t Accountability Bd., to Members, Wis. Gov’t Accountability Bd. 8 (May 23, 2011) (“[S]taff does not examine the recall petition for duplicate signatures.”).

85. Complaint at 2, *Friends of Scott Walker v. Wis. Gov’t Accountability Bd.*, No. 11-CV-4195 (Wis. Cir. Ct. Waukesha Cnty. Jan. 20, 2012).

86. *Id.* at 2, 9–10.

87. Order & Declaration at 2, *Friends of Scott Walker*, No. 11-CV-4195.

88. *Id.*; *see also* WIS. STAT. § 9.10(3)(b) (2011–2012).

89. *See* Order & Declaration, *supra* note 87, at 2.

Bunny to be counted as a valid signature did not amount to careful review.<sup>90</sup> The court, however, gave the GAB broad discretion to implement this review.<sup>91</sup> In particular, the court left it to the GAB to decide whether an electronic scan and review of the signatures was sufficient.<sup>92</sup>

The court's determination was consistent with the history of the recall statute. Initially, the public official subject to recall had no statutory right to review the petitions.<sup>93</sup> The careful examination task was delegated solely to a clerk or county judge,<sup>94</sup> and challenges came after the fact on limited grounds.<sup>95</sup> A statutory right to challenge individual signatures did not arise until 1988.<sup>96</sup>

#### V. CAMPAIGN FINANCE AND THE SECTION 13M EXEMPTIONS

A second significant legal issue impacting the Walker recall was the GAB's application of Wisconsin's campaign finance laws, particularly Wisconsin Statute section 11.26(13m), which provided an obscure but significant exception to campaign finance limits.

As with many states, Wisconsin's detailed campaign finance laws were enacted in response to Watergate abuses in the early 1970s in

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90. *See id.*

91. *Id.*

92. *See id.* Although the court relied upon the language of the Wisconsin Statutes, the Walker campaign also based its objections on the Equal Protection Clauses of the state and federal constitutions. *See id.*; Complaint, *supra* note 85, at 2. The campaign argued that since the pool of qualified electors was by definition finite, the decision to sign or not to sign a recall petition had to carry equal weight. Complaint, *supra* note 85, at 2. Allowing multiple or false signatures to be counted diluted the decision of those deciding not to sign the recall petition. *Id.* The judge considered, but ultimately did not rely upon this argument. Order & Declaration, *supra* note 87, at 2. The circuit court's judgment was appealed by those supporting the recall, who had been denied an opportunity to intervene at the trial level. *See Friends of Scott Walker v. Brennan*, 2012 WI App 40, ¶ 1, 340 Wis. 2d 499, 812 N.W.2d 540 (per curiam) (unpublished table decision). The court of appeals did not reach the merits, but reversed and remanded to give supporters of the recall an opportunity to be heard. *Id.* The matter became moot by agreement of the parties when the GAB indicated that it would follow the circuit court's ruling while the remand was pending. Order of Dismissal, *Friends of Scott Walker*, No. 11-CV-4195.

93. *Cf.* WIS. STAT. § 10.44(3) (1915) (indicating that the city clerk could determine petition sufficiency without the input of parties either seeking or opposing recall).

94. *Id.*; Act of July 11, 1911, ch. 635, 1911 Wis. Sess. Laws 843 (codified at WIS. STAT. § 94j-1 (1911)).

95. *See supra* notes 65–66.

96. *See* 1987 Wis. Act 391, § 62(3)(b) (codified as amended at WIS. STAT. § 9.10(3)(b) (2011–2012)).

order to limit and monitor the amount of contributions and spending on elections.<sup>97</sup> The campaign finance statutes in effect at the time of the 2012 gubernatorial recall imposed strict limits on the amount of money which could be contributed to a candidate for public office.<sup>98</sup> For the position of governor, contributions were limited during an election cycle to \$10,000 from individuals and \$43,128 from political committees.<sup>99</sup> An election cycle was defined by the “closing date” for each election,<sup>100</sup> which was the last day of the month after an election was held.<sup>101</sup> For example, because Governor Walker was first elected governor in November 2010, the closing date for that election cycle was December 31, 2010.<sup>102</sup> Any contribution received after the closing date was applied to the next four-year election cycle.<sup>103</sup>

In the case of the Walker recall election, new bifurcated election cycles were created and separate statutory contribution limits were applied to each election: (1) one cycle was for contributions received between the closing date of the original 2010 election, December 31, 2010, and the closing date of the recall election, which turned out to be July 31, 2012; and (2) a second election cycle defined by the closing date of the recall election through the closing date of the 2014 election.<sup>104</sup>

In addition, an obscure provision of Wisconsin recall law created an approximately sixty-day window during January and February 2012, in

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97. Act effective July 7, 1974, ch. 334, § 34, 1973 Wis. Sess. Laws 1048, 1057 (codified as amended at WIS. STAT. § 11.001) (setting forth “Declaration of policy” for campaign finance restriction).

98. WIS. STAT. § 11.26.

99. *Id.* §§ 11.26(1)–(2), 11.31(1)(a). These numbers were determined through the interplay of various statutes. *See id.* § 11.26(1)(a) (providing the limit per individual as \$10,000); *id.* § 11.26(2)(a) (providing the limit per political committee as “4 percent of the value of the disbursement level specified in the schedule under s. 11.31(1)”); *id.* § 11.31(1)(a) (providing the disbursement level for candidates for governor as \$1,078,200; taking four percent of \$1,078,200 produces \$43,128).

100. *See id.* § 11.26(17)(c).

101. *Id.* § 11.26(17)(d).

102. *See* WIS. LEGISLATIVE REFERENCE BUREAU, *supra* note 68, at 912; *see also* WIS. STAT. § 11.26(17)(d).

103. *See* WIS. STAT. § 11.26(17)(d).

104. *See* Letter from Kevin J. Kennedy, Dir. & Gen. Counsel, Wis. Gov’t Accountability Bd., to Attorney Jeremy P. Levinson 4 (May 27, 2011) [hereinafter Kennedy Letter] (on file with Wis. Gov’t Accountability Bd.); Memorandum from Kevin J. Kennedy, Dir. & Gen. Counsel, Wis. Gov’t Accountability Bd., to All Interested Persons and Committees Involved with Recall Efforts 1–3 (May 26, 2011) [hereinafter Kennedy Memorandum] (on file with Wis. Gov’t Accountability Bd.).

which no monetary limitations were in place.<sup>105</sup> Under section 11.26(13m), no contribution limits applied to money used in support of or opposition to the circulation of recall petitions.<sup>106</sup> Any individual contributor or political committee could legally give \$1 million or more to fund television ads encouraging or discouraging the recall, provided that the money was given during the sixty-day statutory time frame allowed for the circulation of petitions and the money was used for a purpose related to the recall petitions.<sup>107</sup>

Section 13m initially was created by the legislature in 1984 to deal with election recounts.<sup>108</sup> An analysis by the Wisconsin Legislative Reference Bureau indicates that the statute was created as a part of a more general rewriting of recount procedures.<sup>109</sup> The legislature was concerned that under existing law, campaign money used for legal fees and other expenses relating to a recount did not need to be deposited into an official campaign account and did not need to be publicly reported.<sup>110</sup> The new statute was intended to require the public reporting of recount funds, but imposed an unlimited exception for contributions used for legal fees and other costs relating to a recount.<sup>111</sup>

The unlimited contribution exception addressed the legislature's more general concerns regarding recounts: they could be complicated and expensive. The 1983 analysis by the Legislative Reference Bureau noted that recount procedures included reviews by the board of canvassers and the election board, including testimony by witnesses, followed by likely court challenges.<sup>112</sup> The new provisions not only exempted contribution limits, but provided mechanisms for the hiring of

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105. See WIS. STAT. § 11.26(13m); see also Kennedy Letter, *supra* note 104, at 2 (citing WIS. STAT. § 11.26(13m)(b)); Kennedy Memorandum, *supra* note 104, at 1 (citing WIS. STAT. § 11.26(13m)(b)).

106. WIS. STAT. § 11.26(13m).

107. See *id.*

108. 1983 Wis. Act 183 § 40 (codified as amended at WIS. STAT. § 11.26(13m)).

109. Analysis by the Legis. Reference Bureau of Assemb. B. 694, 1983 Leg., Reg. Sess. (Wis. 1983), No. LRB-2359, at 3, *microformed on* Drafting Records, 1983 (Wis. Legis. Reference Bureau) ("Currently, contributions utilized for the purpose of payment of legal fees and other expenses incident to a recount need not be deposited in a campaign depository and need not be reported under the campaign finance law.").

110. *Id.*

111. *Id.*

112. *Id.* at 2-3.



additional election officials and the reimbursement of expenses incurred by the board of canvassers.<sup>113</sup>

Three years later, the legislature expanded the exception to recall activity—but only during the time frame in which recall petitions were being circulated.<sup>114</sup> At the conclusion of the circulation period, when a recall election was either ordered or not, the regular election limits would apply again.<sup>115</sup> Once again, the legislative history of the enactment appears sparse. A memorandum from one state senator at the time notes that under existing law, expenses for a recall would be subject to the normal election restrictions, which vary according to office held or being sought.<sup>116</sup> The change eliminated this restriction until an election was ordered.<sup>117</sup>

Subsequent GAB administrative interpretations confirmed the dual nature of the exemption: the amount of money which could be contributed by individuals and political committees was unlimited, but the uses for the contributions were limited to expenses relating to supporting or opposing the circulation of the recall petitions during the circulation period, prior to a determination of whether the recall would proceed.<sup>118</sup> Most significantly, the GAB advised that advocacy, including television ads, was a proper expense for the exempt recall funds.<sup>119</sup>

The section 13m exemption also did not preempt regular contributions received during the sixty-day circulation window. A contribution at or below the normal limits received during the sixty-day period could be used for either recall petition expenses or normal campaign activity.<sup>120</sup> For the Walker gubernatorial campaign, the section 13m exemption meant that the campaign was able to raise and

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113. *Id.*

114. 1987 Wis. Act 27 § 2r (codified at WIS. STAT. § 11.26(13m) (2011–2012)).

115. *See* WIS. STAT. § 11.26(13m).

116. *See* SEN. HELBACH, MOTION TO WIS. J. COMM. ON FIN., ELECTIONS BD.: EXEMPTION OF CERTAIN CONTRIBUTIONS FROM CONTRIBUTION LIMITATIONS, S.B. 100, 1987 LEG. (1987), *microformed on* Drafting Records, 1987 (Wis. Legis. Reference Bureau).

117. *See* WIS. STAT. § 11.26(13m)(b).

118. *See* Kennedy Letter, *supra* note 104 at 4; Kennedy Memorandum, *supra* note 104, at 1–2.

119. Kennedy Letter, *supra* note 104, at 3 (clarifying that exempt expenses include “public advocacy and persuasion, e.g., through media such as television, radio, or print ads; mailings to the public; telephone calls; and various forms of canvassing and other voter outreach”).

120. *See* Kennedy Memorandum, *supra* note 104, at 3.

spend more than \$10 million, which was not subject to normal campaign finance limitations.<sup>121</sup> That amount was close to the \$11 million that the governor had raised for the entire 2010 election.<sup>122</sup> For the 2012 recall, Walker raised almost \$38 million.<sup>123</sup> By contrast, his main opponent, Milwaukee Mayor Tom Barrett, raised a total of \$6.3 million for the recall.<sup>124</sup>

## VI. LEGAL AGREEMENT AMID POLITICAL ACRIMONY

The Committee to Recall Walker submitted more than 1 million signatures, almost twice the required number.<sup>125</sup> After a legal fight over the amount of time allowed for the Walker campaign and the GAB to review signatures,<sup>126</sup> the parties (both supporting and opposing recall) and the GAB quickly came to an agreement on the scheduling of the recall election.<sup>127</sup> The parties agreed with the GAB recommendation

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121. See Jason Stein & Patrick Marley, *Walker's Cash Cache Dwarves Democrats': Governor Raises \$13.2 Million over Three-Month Period*, MILWAUKEE J. SENTINEL, May 1, 2012, at A1; see also WIS. CAMPAIGN FIN. INFO. SYS., CAMPAIGN FINANCE REPORT GAB-2 FOR SPECIAL PRE-PRIMARY 2012: FRIENDS OF SCOTT WALKER (2012), available at <https://cfis.wi.gov/ReportsOutputFiles/010257510007708129201343448PMGAB2Report.pdf>.

122. Todd Richmond, *Walker Raised More than \$37M Since He Took Office—A New Report Shows Fundraising for the Recall Blew Away Previous Election Records*, WIS. ST. J., July 6, 2012, at A1.

123. *Id.*

124. *Id.* The numbers do not reflect spending by political committees and other third parties. *Id.*

125. *Committee to Recall Walker*, *supra* note 77.

126. See Order at 2, *In re* Petitions to Recall, No. 12-CV-0295 (Wis. Cir. Ct. Dane Cnty. Jan. 30, 2012) (involving not just the recall against Governor Walker, but also the simultaneous effort to recall Lieutenant Governor Kleefisch and four state senators). The litigation involved the amount of extra time to be given to each of the parties under Wisconsin Statute section 9.10(3)(b) to file objections to the respective recall petitions. *Id.* The court initially granted each public official an additional twenty days to file objections and gave the GAB until March 19, 2012, to complete its own independent examination. *Id.* A subsequent request for additional time was denied and ultimately Governor Walker filed no objection to the GAB determination that the number of valid signatures was 900,939. See WIS. GOV'T ACCOUNTABILITY BD., *March 30, 2012 Meeting: Open Session Minutes*, in 5.15.12 OPEN SESSION ALL BOARD MATERIALS 17, 18 (2012), available at [http://gab.wi.gov/sites/default/files/event/74/open\\_session\\_all\\_pdf\\_11362.pdf](http://gab.wi.gov/sites/default/files/event/74/open_session_all_pdf_11362.pdf); *Committee to Recall Walker*, *supra* note 77; *Judge Denies Governor Scott Walker's Extension Request*, GREEN BAY PRESS GAZETTE (Feb. 18, 2012), <http://www.greenbaypressgazette.com/viewart/20120218/GPG010403/202180641/Judge-denies-Governor-Scott-Walker-s-extension-request>.

127. See *Judge Approves May 8, June 5 Recall Dates*, *supra* note 6. The Committee to Recall Walker was represented by Attorney Jeremy P. Levinson. See *Wisconsin Recall Groups Ask Court to Block Ruling*, WIS. L.J. (Jan. 4, 2012, 8:44 AM), <http://wislawjournal.com/2012/01/04/wisconsin-recall-groups-ask-court-to-block-ruling/>; see also Letter from Lewis

that the gubernatorial recall election be held on the same date as the other pending recall elections, including that of the lieutenant governor and four state senators.<sup>128</sup> The recall primary (if needed) would be held May 8, 2012, and the general election would be June 5, 2012.<sup>129</sup>

This agreement avoided potentially protracted litigation over two main issues. First, the simultaneous recall of the governor and lieutenant governor was the subject of conflicting provisions of the Wisconsin Constitution. Article V, section 3 requires that the governor and lieutenant governor be jointly elected from the same political party,<sup>130</sup> while article XIII, section 12 provides that officeholders are subject to individual recall.<sup>131</sup> If the former took precedence, the governor or lieutenant governor could be drawn into a recall that was aimed only at one and not the other. If the latter took priority, a successful recall as to one officeholder could result in the governor and lieutenant being from different parties.

Wisconsin Attorney General J.B. Van Hollen analyzed this conflict and issued an advisory opinion in November 2011.<sup>132</sup> The Attorney General advised that the recall provision of article XIII took precedence over the joint election provision of article V because the recall provision expressly contemplated individual recall.<sup>133</sup> Still, the opinion of the Attorney General was persuasive, but not binding authority.<sup>134</sup>

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W. Beilin, Assistant Attorney Gen., Wis. Dep't of Justice, to Judge Richard G. Niess, Dane Cnty. Circuit Court (January 30, 2012) (on file with Wis. Dep't of Justice). The GAB was represented by Wisconsin Assistant Attorney General Lewis W. Beilin, along with GAB Director and General Counsel Kevin Kennedy. See Letter from Lewis W. Beilin to Judge Richard G. Niess, *supra*; Kennedy Memorandum, *supra* note 104, at 1. Each deserves substantial credit for the agreement.

128. See *Judge Approves May 8, June 5 Recall Dates*, *supra* note 6 (reporting that a Wisconsin judge had signed off on an agreement for May 8 and June 5 recall dates).

129. *Id.*

130. WIS. CONST. art. V, § 3 (pronouncing that the governor and lieutenant governor “shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices”); see also S.J. Res. 11, 1967 Leg., Reg. Sess., 1967 Wis. Sess. Laws 490 (Wis. 1967) (passing a constitutional amendment in April 1967 so that governor and lieutenant governor would be from the same party).

131. WIS. CONST. art. XIII, § 12. According to article XIII, section 12, electors may petition “for the recall of any incumbent elective officer.” *Id.*

132. Wisconsin Constitution Requires a Separate Petition for Recall of Governor and Lieutenant Governor, Op. Wis. Att’y Gen., OAG-4-11, at 1 (2011), available at <http://www.doj.state.wi.us/sites/default/files/formal/OAG-4-11.pdf>.

133. *Id.* at 4.

134. *Schill v. Wis. Rapids Sch. Dist.*, 2010 WI 86, ¶ 106, 327 Wis. 2d 572, 786 N.W.2d 177; see also WIS. STAT. § 19.39 (2011–2012).

Therefore, any party to the recall could have delayed the recall vote with a constitutional fight, which ultimately would have to have been resolved by the Wisconsin Supreme Court. Instead, the parties accepted the Attorney General's interpretation.<sup>135</sup>

Second, the parties' agreement meant that the gubernatorial election would be held on the same date as the other pending recall elections, including not just the lieutenant governor, but four state senators—a joint circumstance not contemplated by Wisconsin law.<sup>136</sup>

Under the Wisconsin Constitution, the timing of recall elections appears straightforward: the recall is to be held on the Tuesday of the sixth week after the date of the "filing" of the recall petition.<sup>137</sup> If a primary is required, it is to be held during the sixth week and the general election follows four weeks later.<sup>138</sup> But state statutes do not equate "filing" with "receipt." The presentment of recall signatures to the elections official simply means that the petitions are "offered for filing."<sup>139</sup> The actual "filing," under state law, occurs when the election officer completes the necessary review of the petitions and any objections by the incumbent.<sup>140</sup>

As a result, even jointly presented recall petitions may not result in simultaneous recall elections. The review of petitions by GAB for the governor may take longer than similar petitions for the lieutenant governor, or vice versa. Also, each of those reviews may take longer than the review for an individual state senator.<sup>141</sup> Thus, while the state

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135. See *Judge Approves May 8, June 5 Recall Dates*, *supra* note 6 (reporting that a Wisconsin judge had signed off on an agreement for May 8 and June 5 recall dates).

136. See *id.*

137. WIS. CONST. art. XIII, § 12(2).

138. *Id.* § 4(c).

139. See WIS. STAT. § 9.10(3)(b).

140. *Id.*

141. See *id.* As discussed in Part III.B.3, *supra*, the statutes provide a thirty-one-day review period similar to a motion briefing schedule: within ten days after the petition is submitted, the officeholder may file written objections. WIS. STAT. § 9.10(3)(b). The recall petitioner then has five days to respond. *Id.* If a response is filed, the officeholder has another two days to respond to that filing. *Id.* The election official then has fourteen days to make a determination. *Id.* The statute provides that for "good cause" extra time may be granted by the circuit court for any of the time periods relating to objection/review of the petition. *Id.* If the petition is found to be invalid, the recall petitioners have five days to cure any deficiency. *Id.* If the petition is found to be valid, the officeholder may challenge the finding through a mandamus action in a Wisconsin circuit court. *Id.* § 9.10(3)(bm). The sole jurisdiction for the circuit court is whether the recall petition is sufficient. *Id.*

constitution provided strict six- and ten-week deadlines, the petition review period meant that the schedule had some flexibility.<sup>142</sup>

The agreement among the parties and the GAB provided an orderly recall process with a single primary and general election and saved millions of tax dollars.<sup>143</sup> Separate primary and general elections for governor and lieutenant governor would have resulted in four state-wide elections at a cost of \$9 to \$10 million each.<sup>144</sup> The four state senate recall elections may have added eight separate local elections. The time, expense, and confusion of separate elections were avoided.

## VII. CONCLUSION

Governor Walker became the first United States governor to survive a recall.<sup>145</sup> The recall effort was motivated by the political issue of collective bargaining for public employees. At the same time, the legal issues involving the Walker recall were unique unto themselves. The right of recall did not begin in Wisconsin until 1911 and was not expanded to state-wide officeholders until 1926.<sup>146</sup> By the time of the Walker recall in 2012, the Wisconsin Constitution and state statutes created a distinct set of recall circumstances where (1) the state's GAB election agency publically declared that recall signatures using the names of cartoon characters would be presumptively valid;<sup>147</sup> (2) the incumbent was allowed to raise unlimited campaign contributions during a sixty-day time period when recall signatures were being collected;<sup>148</sup> and (3) contradictory laws indicated that the governor and lieutenant governor either should or should not be recalled at the same time.<sup>149</sup> The GAB position forced court action that resulted in reversal

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142. See WIS. CONST. art. XIII, § 12(2), (4)(c).

143. See *G.A.B. Releases 2012 Election Cost Data*, WIS. GOV'T ACCOUNTABILITY BD., (Sept. 14, 2012), <http://gab.wi.gov/node/2569>; see also Patrick Marley, *Walker Recall Tally Totals 931,000: Signatures Still Being Reviewed, GAB Says*, MILWAUKEE J. SENTINEL, Mar. 13, 2012, at B1. The statewide primary and general elections for governor and lieutenant governor cost in excess of \$13 million, but did include the four simultaneous state senator recalls. See *G.A.B. Releases 2012 Election Cost Data*, *supra*.

144. Marley, *supra* note 143 (estimating that each statewide vote would cost about \$9 million).

145. Guarino, *supra* note 1.

146. See *supra* notes 24, 29 and accompanying text.

147. See Marley, *supra* note 4.

148. See *supra* notes 105–07 and accompanying text.

149. See *supra* notes 130–35 and accompanying text.

of the presumption of validity for cartoon characters;<sup>150</sup> the window of unlimited campaign contributions meant that Governor Walker raised more than four times the amount of money collected by his opponent;<sup>151</sup> and the clash of laws on whether the governor and lieutenant governor should be recalled separately or together was sidestepped by an agreement of all the recall parties that the recall election of the governor and lieutenant governor should take place on the same day.<sup>152</sup> An assessment of the historic nature of the recall is not complete without consideration of these issues.

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150. *See supra* notes 82–83, 88–91 and accompanying text.

151. Richmond, *supra* note 122; *see also supra* text accompanying notes 123–24.

152. *See supra* Part IV.